

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20024,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
425 I Street, NW
2nd Floor ULLICO Building
Washington, DC 20536

Defendant.

CASE NUMBER 1:04CV00907

JUDGE: Reggie B. Walton

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 06/03/2004

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., hereby files this Complaint to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024.

4. Defendant Department of Homeland Security (“DHS”) is an agency of the United States government. DHS has its principal place of business in the District of Columbia. DHS is in possession, custody and control over records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On February 27, 2004, Plaintiff sent DHS a FOIA request, by facsimile and by certified U.S. mail, return receipt requested, seeking access to any and all records concerning or relating to the following subjects:

- a. Any and all records that refer and/or relate to a survey, developed by Border Patrol officials in Washington, of illegal aliens detained at the US-Mexican border, that had sought to establish whether “rumors of amnesty” had influenced their decision to cross into the United States.
- b. Any and all records that refer and/or relate to the number(s) of illegal immigrants entering the United States as a result of the amnesty and/or guest-worker program and/or immigration reforms proposed by President George W. Bush on January 7, 2004.
- c. Any and all records that refer and/or relate to decision to discontinue the survey on or about January 27, 2004.
- d. Any and all records that refer/relate to the results of any survey of illegal immigrants entering the United States as the result of the amnesty and/or guest-worker program and/or immigration reforms proposed by President George W. Bush on January 7, 2004.
- e. Any and all records that refer and/or relate to the number of illegal immigrants apprehended in San Diego county from January 7, 2004 to present.
- f. Any and all records that refer and/or relate to the reported 13 questions contained on said questionnaire(s).
- g. Any and all records that refer and/or relate to the decision to instruct border patrol agents “not [to] talk about amnesty, an increase in apprehensions, or give comparisons of past immigration reform proposals” when talking with the media.

h. The “talking points” distributed nationwide in which border agents are “not to talk about amnesty, and increase in apprehensions, or give comparisons of past immigration reform proposals.”

Plaintiff’s FOIA request also sought a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), 5 U.S.C. § 552(a)(4)(A)(iii), and 32 C.F.R. § 518.84(a)-(e). A copy of Plaintiff’s FOIA request is attached hereto as Exhibit 1 and is incorporated herein by reference.

6. On or about March 2, 2004, Plaintiff received a letter from Ave M. Sloane of the U.S. Citizenship and Immigration Services, Freedom of Information and Privacy Acts Office, an entity within DHS and acting at the direction of DHS, acknowledging receipt of Plaintiff’s FOIA request. The letter stated that DHS had placed Plaintiff’s FOIA request on a “complex” track, but did not advise Plaintiff when it could expect to receive records responsive to its request. A copy of Ms. Sloan’s March 2, 2004 letter is attached hereto as Exhibit 2 and is incorporated herein by reference.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DHS was required to determine whether to comply with Plaintiff’s FOIA request by March 29, 2004. However, DHS failed to issue any such determination by that date, nor did DHS invoke the provisions of 5 U.S.C. § 552(a)(6)(B) allowing for an extension of time to respond to the request.

8. On May 10, 2004, Plaintiff sent a letter to Ms. Sloane requesting an update on the status of its February 27, 2004 FOIA request. A copy of Plaintiff’s May 10, 2004 letter is attached hereto as Exhibit 3 and is incorporated herein by reference.

9. On or about May 13, 2004, Ms. Sloan sent Plaintiff a response to its May 10, 2004 request for a status update. The letter stated that the request was being processed and that it was “currently number 647 on the list of 760 pending cases to be worked.” The letter failed to inform Judicial Watch, Inc. when it could expect to receive a substantive response to its February 27, 2004

FOIA request. A copy Ms. Sloan's May 13, 2004 letter is attached hereto as Exhibit 4 and is incorporated herein by reference.

10. As of June 2, 2004, DHS has failed to respond to Plaintiff's February 27, 2004 FOIA request in any substantive manner. It has failed to produce any records responsive to the request or claim that such records are exempt from production under any of the exemptions set forth in 5 U.S.C. § 552(b). It also has failed to inform Plaintiff when it can expect to receive a response to its request and has failed to invoke the provisions set forth in 5 U.S.C. § 552(a)(6)(B) for extending the time limits to respond to the request.

11. Because DHS failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) or extend those time limit provisions pursuant to 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its February 27, 2004 FOIA request. 5 U.S.C. § 552(a)(6)(C).

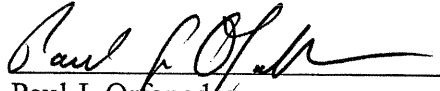
COUNT 1
(Violation of FOIA)

12. Plaintiff realleges paragraphs 1 through 11 as if fully stated herein.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) enjoin Defendant from continuing to withhold records responsive to Plaintiff's February 27, 2004 FOIA request and order Defendant to produce all responsive records improperly withheld from Plaintiff without further delay; (4) award Plaintiff attorneys fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant such other relief as the Court deems just and proper.

Respectfully submitted,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Paul J. Orfanedes", written over a horizontal line.

Paul J. Orfanedes

D.C. Bar No. 429716

James F. Peterson

D.C. Bar No. 450171

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